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In the Matter of)

Policy and Rules Concerning the Interstate,
Interexchange Marketplace)

CC Docket No. 96-61

Implementation of Section 254(g) of the
Communications Act of 1934, as amended)

CC Docket No. 98-183

1998 Biennial Regulatory Review - Review
of Customer Premises Equipment and
Enhanced Services Unbundling Rules in the
Interexchange, Exchange Access and Local
Exchange Markets)

COMMENTS OF BELL ATLANTIC

Edward D. Young III
Michael E. Glover
Of Counsel

Lawrence W. Katz

1320 North Court House Road
Eighth Floor
Arlington, Virginia 22201
(703) 974-4862

Attorney for the
Bell Atlantic telephone companies

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COMMENTS OF BELL ATLANTIC¹

I. Introduction and Summary

Based on six years of relevant cellular experience, the Commission should unequivocally conclude that allowing all local and long distance carriers to offer discounted packages of their telecommunications services along with CPE and enhanced services will serve the public interest and will not harm competition. When it granted similar relief for wireless services, the Commission predicted “significant public interest benefits associated with the bundling of cellular CPE and service.” *Bundling of Cellular Customer Premises Equipment and Cellular Service*, 7 FCC Rcd 4028, ¶ 19 (1992)

¹ The Bell Atlantic telephone companies ("Bell Atlantic") are Bell Atlantic-Delaware, Inc.; Bell Atlantic-Maryland, Inc.; Bell Atlantic-New Jersey, Inc.; Bell Atlantic-Pennsylvania, Inc.; Bell Atlantic-Virginia, Inc.; Bell Atlantic-Washington, D.C., Inc.; Bell Atlantic-West Virginia, Inc.; New York Telephone Company; and New England Telephone and Telegraph Company.

("Cellular Bundling Order"). The Commission considered it "unlikely that any carrier engaged in bundling would be able to restrict competition in the CPE market." *Id.* at ¶ 13. This, it found, was the case even though at that time it was "difficult to conclude that the cellular service market [unlike cellular CPE] is fully competitive." *Id.* at ¶ 11.

History has shown that allowing discounted packaging of cellular service and CPE was a wise decision, as all segments of the wireless marketplace, including the new personal communications service ("PCS") competitors, have prospered. The Commission can confidently predict that the same will happen with wireline local and long distance services.² Competitors will offer diverse service and equipment packages at a range of prices, each trying to be the customer's single provider. Carriers will offer their wares through an increasing number of sales channels offering their own packages of telecommunications and enhanced services and CPE. All of this competition, in turn, will open many more avenues for CPE manufacturers and enhanced service providers to market their products, ensuring that competition continues to thrive. The public will fully benefit from the policy change, however, only if all carriers, "dominant" and "non-dominant," incumbents and new entrants, are given the same freedom to offer discounted packages of their telecommunications services with CPE and enhanced services.

Allowing carriers to provide discounted packages will also help promote deployment of advanced services, such as digital subscriber line and ISDN services, which often require specialized CPE. These services are often used to access the Internet,

² By requiring all carriers to offer their telecommunications services unbundled from CPE and enhanced services and to adhere to network disclosure requirements, the Commission can ensure that customers who choose not to take CPE or enhanced services from the carriers will still have access to all telecommunications services.

and allowing them to be packaged with enhanced Internet services will promote use of those services as well. Such action is consistent with the Commission's obligations under 706 of the 1996 Act to promote advanced services, the requirements of section 157 of the Act to promote new technology, and Congressional policy in section 230 to promote the continued development of the Internet.

II. The Cellular Experience Shows That Allowing the Discounted Packaging of Service and Equipment Will Further the Public Interest and Is Pro-Competitive.

A. Local Wireline Competition Is Substantial and Growing Rapidly.

When it allowed cellular carriers to package CPE at a discount with their telecommunications offerings, the Commission's decision did not turn on the amount of competition that existed in the cellular service market. In fact, the Commission specifically found that the cellular service market was not fully competitive at that time and instead based its decision on its finding that the cellular CPE market was fully competitive. *See Cellular Bundling Order at ¶ 30.* In order to provide similar relief here, the Commission need only find that the wireline CPE and enhanced service markets are fully competitive, as Bell Atlantic shows below that they are.

Nonetheless, in the Notice here, the Commission dwells in several places on the level of telecommunications competition in the local and long distance markets. *See Further Notice of Proposed Rulemaking, FCC 98-258, ¶¶ 13, 26, 29, 39 and 41 (rel. Oct. 9, 1998).* Therefore, at the outset, Bell Atlantic shows that today local competition already is developing in much the same manner that it developed in the wireless market. Then, by examining the impact of allowing discounted packaging on cellular competition

in the intervening six years, the Commission can predict how similar relief will impact wireline service competition.

While the wireless market today is highly competitive, it was less so in 1992. At that time, the Commission considered the cellular market a *de jure* duopoly of facilities-based cellular carriers which together controlled nearly 100% of the market. The Commission found at the time that competition from resellers and other wireless providers was insufficient to constrain the facilities-based carriers from acting anticompetitively. Cellular Bundling Order at ¶ 11. PCS and other sources of spectrum to provide competing services were not yet available.³ Nonetheless, the Commission found sufficient public need in 1992 to lift the restriction immediately for the incumbent cellular carriers.

Likewise, the local wireline market is today becoming increasingly competitive, and significant competition is already in place. By September of this year, Bell Atlantic had signed over 750 interconnection agreements with competitors and these competitors served one and one-quarter million local lines. Over 660 collocation sites were in operation in Bell Atlantic's switching centers, with hundreds more under construction. States in Bell Atlantic's region have certified dozens of competing local carriers, with dozens more applications pending. Competing carriers range from affiliates of the largest long distance telephone companies – AT&T, MCI WorldCom, and Sprint – to a myriad of smaller carriers.

³ Auctions for broadband PCS licenses were held in three stages during the period December 1994 to March 1998. See *Third Annual CMRS Competition Report*, FCC 98-91 at A-3 (rel. June 11, 1998) ("CMRS Report").

The Commission has recognized this growing competition. It refuted arguments that the Act is not working by pointing to a Merrill Lynch report that shows competition is growing faster for local than it did for long distance:

[The Commission points out that c]ompetition in the local calling market is moving faster than the 1980's battle over long distance. Two years after the [1996] Act, rivals have captured 3.5% of local phone revenues from the Baby Bells, says Merrill. In contrast, two years after the 1979 court decision letting MCI sell long distance services, carriers had won only 1.4% of that market from AT&T, the FCC notes.... For next year, the third since deregulation, Merrill predicts that local competitors will control 6% of the market.

Catherine Yang, *Yes, Virginia, There Is Phone Competition*, BUSINESS WEEK, Sept. 28, 1998, at 6. As another analyst explained:

[T]he combination of access to low cost capital coupled with a clear regulatory and public policy initiative toward opening up local markets has allowed the CLECs as a group to achieve in less than 2 years after the Telecom Act, what it took MCI and other alternative long distance carriers over 10 years to achieve during the 1970s and 1980s. If one takes the obvious logical extension of this, this means that the 50% loss of market share that AT&T saw from 1986 through 1996 could be replicated in the local market in a much quicker time period.

Salomon Smith Barney, *CLECs Surpass Bells in Net Business Line Additions For First Time*, May 6, 1998 ("CLECs Surpass Bells Report").

In addition, as Chairman Kennard has testified, we should expect local competition to grow with "the type of steadily increasing momentum that we saw with the introduction of competition into the long distance market." Statement of William E. Kennard, Chairman, FCC, before the Subcommittee on Commerce and the Judiciary Committee on Appropriations, U.S. House of Representatives, 1998 FCC LEXIS 1775 (Mar. 25, 1998) ("Kennard March Testimony"). Moreover, as the Chairman testified, illustrative examples of competition are many and varied:

We see growing competition in the hundreds of state-approved interconnection agreements between incumbents and competitive local exchange carriers ("CLECS") entering the local telephone market. The top 10 CLECS have switches in 132 cities spanning 33 states and the District of Columbia. Approximately 2400 interconnection agreements have been created under the 1996 Act's framework. And over the past two years, \$14 billion has been invested in CLECS, and their combined market capitalization has risen to over \$20 billion.

Kennard March Testimony. Indeed, in just the past year, the number of major multistate competitive local exchange carriers has tripled. *Number of Large Multistate CLECs Triples Since 1997*, COMMUNICATIONS DAILY, Oct. 8, 1998.

These new entrants have made major inroads, particularly in urban areas for the most lucrative business services. As one financial analyst described, the first quarter of 1998 was "a watershed time in the local exchange industry" as competitive local exchange carriers had "more net business line additions than the Bells as a group." CLECs Surpass Bells Report. One observer notes that, in New York City alone, "Bell Atlantic has already lost an estimated 20% of its total large business customers to upstarts like MFS and Teleport Communications Group, which are now subsidiaries of MCI WorldCom and AT&T, respectively." Judith Messina, *End to Call Waiting in Sight for Local Service Providers*, CRAIN'S NEW YORK BUSINESS (Nov. 9, 1998). As a result, to an even greater degree than the cellular marketplace in 1992, additional local wireline competitors are already entering rapidly, with exponential growth rates expected in the months and years ahead.

B. The Wireline CPE and Enhanced Service Markets Are Fully Competitive.

The Commission found in 1992 that the cellular CPE market was fully competitive, and it has become more competitive intervening six years. See Cellular Bundling Order at ¶ 9. For example, while there were an estimated 17-25 wireless CPE manufacturers in 1992, *id.*, today TIA reports that more than 100 manufacturers have been assigned wireless manufacturer electronic serial numbers.⁴ And, as a result of competition and technology, wireless handsets are being updated so frequently that “major manufacturers offer redesigns about once a year, with smaller revisions as frequently as every month.” Jennifer Files, *Nokia Latest to Appear to Lead Cellular Market*, DALLAS MORNING NEWS (Nov. 10, 1998). The Commission should find that the wireline CPE and enhanced service markets are likewise fully competitive today, and that these findings alone justify eliminating the current restriction.

CPE

Nearly two decades ago, when it deregulated CPE, the Commission determined that “there are hundreds of manufacturers and suppliers” of a wide variety of types of CPE and that the industry had “competitive potential.” *Amendment of Section 64.702 of the Commission’s Rules and Regulations (Second Computer Inquiry)*, 77 F.C.C. 2d 384, ¶143 (1980). It declined to allow CPE to be offered as part of discounted packages at that time, however, because subscribers might not be able to obtain the particular packages they want. “Unless the goods and services in the bundle exactly

⁴ See the website of the Telecommunications Industry Association (“TIA”), which assigns those numbers, at <http://www.tiaonline.org/standards/esn/codes.html>.

match the preferences of consumers, consumer satisfaction may be reduced by bundling.”

Id. at ¶ 149.

Seven years later, however, the Commission found CPE competition sufficiently “vigorous” that structural separation for Bell company provision of CPE could be lifted. “Given the high degree of competition in the CPE market, we conclude that BOC dominance of the CPE market is extremely unlikely.” *Furnishing of Customer Premises Equipment by the Bell Operating Telephone Companies and the Independent Telephone Companies*, 2 FCC Rcd 143, ¶ 25 (1987).

There can be little doubt that the Commission was entirely correct. One standard industry study refers to consumer telephone CPE today as “a commodity industry.” MultiMedia Telecommunication Association and Telecommunications Industry Association, 1998 MULTIMEDIA TELECOMMUNICATIONS MARKET REVIEW AND FORECAST at 113 (“MULTIMEDIA”). Some 25.3 million corded and 21.1 million cordless telephones were sold in 1997. *Id.* at 113-14. Telephone equipment is available from a wide range of retailers – electronics dealers, hardware stores, department stores, catalogs, even drug stores. Prices are steadily declining, particularly for cordless and full-featured corded sets. The diversity of vendors and presence of vigorous competition makes it extremely unlikely that any consumer’s demand for unbundled CPE would go unmet if carriers were allowed to offer CPE along with their services. And the local exchange carriers are insignificant players in the CPE market, generally having chosen to leave the bulk of CPE sales to non-affiliates.

Enhanced Services

Likewise, the enhanced (or information) service market is fully competitive, with thousands of vendors, ranging from affiliates of the largest interexchange carriers and other multi-billion dollar corporations to successful start-ups with niche markets.⁵ It is inconceivable that the local exchange carriers, with *de minimis* market shares, could have any significant impact on the competitiveness of the enhanced services marketplace.

As early as 1994, the enhanced services industry already accounted for \$135.9 billion in revenues, and the Commerce Department termed it “among the fastest growing sectors of the economy.” United States Department of Commerce, *U.S. Industrial Outlook 1994* at 25-1. Moreover, competition has thrived in the particular enhanced service segments where incumbent local exchange carriers have focused their energies – namely, Internet access and voice messaging services. More than 4,300 Internet service providers are in operation, more than triple the figure of just two years ago. See J. Rickard, BOARDWATCH MAGAZINE’S DIRECTORY OF INTERNET SERVICE PROVIDERS (Fall 1997). And by 2000, Internet service provider revenues are expected to reach a whopping \$50 billion. See P. Vadlamudi, *Amid the Churn and Change, ISP Market Keeps on Growing*, INVESTOR’S BUSINESS DAILY, Nov. 13, 1997 at A8 (citing Maloff Group estimates).

⁵ In its Comments in CC Docket Nos. 95-20 and 98-10 at 4-7 (filed Mar. 27, 1998) and in its initial comments in CC Docket No. 95-20 at 4-15 (filed Apr. 7, 1995), Bell Atlantic provided detailed showings that the enhanced service market is fully competitive.

In voice messaging, competition and technological advances caused prices of a voice mailbox to fall by more than half in just four years, from just under \$30 in 1990 to \$8 in 1994. *See* J.A. Hausman and T.J. Tardiff, "Benefits and Costs of Vertical Integration of Basic and Enhanced Telecommunications Services," at 9 and 14 (Apr. 6, 1995) (appended to the April 7, 1995 comments filed by Bell Atlantic and NYNEX in CC Docket No. 95-20). And answering machines, which represent the principal competition to voice messaging, continue to proliferate, with some 17 million sold last year alone. *See* MULTIMEDIA at 113-14. Given these numbers, there can be no reasonable argument that discounted packaging will either harm competition or deprive the public of unbundled enhanced services.

C. Cellular Packaging Has Benefited the Public Without Harming Competition.

The Commission need only examine the impact over the past six years of discounted packaging on wireless services and CPE as a real world indication of what will happen if similar relief is provided in the wireline business. That examination will fully validate the Commission's prediction of "significant public interest benefits associated with the bundling of cellular CPE and service." Cellular Bundling Order at ¶ 19.

From 1989-93, the wireless industry added 10.4 million subscribers; from 1993-97 – after the bundling order – 35.3 million new subscribers were added to the rolls. *See* MULTIMEDIA at 125. The wireless telephone market as a whole (cellular and PCS) is expected to continue to grow at a compound annual rate of nearly 18% through 2001, *id.* at 119, when subscribership will likely pass the 100 million subscriber level. *See* CMRS

Report at B-8. Mobile service revenues in 1996 approached 12% of total U.S. telecommunications revenues, *id.* at 2, and, before long, according to the Commission, wireless “may become a direct competitor to wireline telephone service.” *Id.* at 6.

During the past six years, the number and diversity of outlets in which customers may obtain packages of wireless services and equipment also have proliferated. Available only through a relatively few retail outlets in 1992, “[n]ow it is possible to purchase wireless service nearly anywhere – at neighborhood grocery stores, discount warehouses, a standalone outlet, an electronics outlet, or specialty shops.” See Iain Gillott, *Service Bundling: The Emergent Guiding Principle in Residential Communications Marketing*, INT’L DATA CORP. at 6 (Feb. 1998). As a result, the public has more diverse and more convenient places to obtain their wireless telephone services and a wide diversity of service, equipment, and pricing packages from which to choose.

None of this has harmed competition, as the Commission’s own numbers bear out. Despite their late start, new PCS entrants were by no means inhibited by the incumbents’ ability to package services and equipment. From just 300,000 subscribers in 1996, broadband PCS penetration grew to well over 2 million by the end of 1997, *see* CMRS Report at B-16, and is expected to exceed 6 million this year. *Id.* at B-8. Moreover, the number of new subscribers to PCS are expected to exceed new cellular subscribership by 2000. *Id.*

Additionally, discounted packaging has not in any way harmed the competitiveness of the cellular CPE market. Instead, by reducing the customers’ up-front costs, it has stimulated the market. Cellular telephone sales have grown more than three-fold, from 3.4 million in 1992 to 10.6 million last year. *See* MULTIMEDIA at 132.

Manufacturers are vying with each other to produce smaller and lighter sets, with more features and longer battery life. Yet the average price of a set has plummeted from \$410 to \$225, reflecting both the economies from increased competition and declining-cost technology. *Id.*

D. Discounted Packaging of Wireline Services and CPE Will Likewise
Serve the Public Interest Without Harming Competition.

The Commission can use this experience to predict with confidence that allowing all carriers to package their wireline telecommunications service offerings with CPE and enhanced services will serve the public interest. Incumbents and new competitors alike will offer new creative packages designed to meet customers' needs and uncover additional retail outlets through which to sell those packages.⁶ This will increase the total demand for telecommunications services, including additional lines and optional services such as Caller ID that require special CPE, and for newly-packaged enhanced services such as voice messaging and enhanced Internet access.⁷

This additional service demand will increase the overall market for CPE. With many competing service providers each offering different packages, all CPE manufacturers will find more opportunities to sell their equipment. In addition, subscribers to new services will often want additional full-function CPE for other locations in their homes or offices, or they may want to upgrade the CPE that was

⁶ This trend has begun already. For example, Bell Atlantic has recently announced that Staples office supply stores are selling some of its local telecommunications services.

⁷ Advanced services that require specialized CPE are discussed below.

provided as part of the package. They can be expected to buy the additional and upgraded CPE from a source other than the carrier, such as a retail store, just as they do today. Therefore, allowing discounted packaging can be expected to open additional distribution channels for CPE manufacturers and will increase the total market size.⁸

If the Commission is concerned that customers who prefer not to obtain CPE and enhanced services from the telecommunications carrier would not have telecommunications services separately available, it can require that all such services be made available without CPE and enhanced services, just as it required for cellular. Cellular Bundling Order at ¶ 30. Likewise, CPE and enhanced service vendors will not be deprived of the ability to interconnect with carriers' telecommunications services. Incumbent local exchange carriers must continue to comply with the network disclosure rules promulgated pursuant to section 251(c)(5) of the Act. *See* 47 C.F.R. §§ 51.325-51.335. And other carriers are subject to the "all-carrier rule," 47 C.F.R. § 64.702(d)(2), which also requires carriers to disclose the technical information needed for interconnection.

Nor will discounted packaging in any way harm service competition. Incumbents and new entrants alike will have the same ability to compete to offer the bundles of services and equipment that they believe their customers will find most

⁸ Even if a particular carrier were to align with one or two manufacturers, there would still be many outlets for competing manufacturers to offer their CPE through competing carriers, retail stores, and in other areas of the country served by different incumbent carriers, just as the Commission accurately found would happen for cellular CPE. *See* Cellular Bundling Order at ¶ 18 ("[e]xclusive dealing arrangements would not eliminate international and national CPE providers in the absence of a nationwide conspiracy by cellular carriers to eliminate CPE manufacturers.").

attractive. In the case of local competition, provisions of the 1996 Act, which supplement pre-existing 1934 Act protections, ensure that competitors are fully protected. The incumbent local exchange carriers will still be required to provide unbundled network elements to their competitors and make their services available for resale. They still must comply fully with nondiscrimination requirements of the Act and the Commission's rules.

With all of these protections in place against anticompetitive conduct, there is no justification for the Commission to try to manage competition and to pick winners and losers by allowing some carriers to meet their customers' one-stop shopping needs by packaging telecommunications and enhanced services and CPE while precluding others. The public will not reap the benefits if the Commission adopts different policies based on whether it has defined a carrier as "dominant" or "non-dominant," or whether it is an incumbent or new entrant into the market. Such market management would simply deny one set of competitors the opportunity to compete effectively. As shown above, the cellular experience shows that allowing discounted packaging of telecommunications services, CPE, and enhanced services benefits consumers with no harm to competition, regardless of whether the telecommunications market is fully competitive.

III. Allowing All Carriers to Provide Discounted Packages Will Further Congressional Policies to Promote Deployment of Advanced Services, New Technologies, and the Internet.

The Commission is required by statute to “encourage the deployment on a reasonable and timely basis of advanced telecommunications capability to all Americans.” Section 706(a) of the 1996 Act. Congress has also established national policies “to encourage the provision of new technologies and services to the public,” 47 U.S.C. § 157(a), and “to promote the continued development of the Internet and other interactive computer services and other interactive media.” 47 U.S.C. § 230(b)(1). Allowing all carriers to provide discounted packages of advanced telecommunications services with CPE and enhanced services is consistent with these provisions of law.

Many advanced telecommunications services require specialized CPE that customers would otherwise need to buy separately, because they represent new technologies that traditional CPE cannot support. For example, ordinary telephones will not support ISDN. Instead, ISDN requires specialized digital sets, which are often more expensive than standard analog sets. By providing an ISDN set as part of a discounted package, perhaps including leasing or amortizing the purchase of the equipment, a carrier can eliminate some of the up-front investment that inhibits customers from subscribing to ISDN. The resulting increased demand will encourage carriers to deploy ISDN more broadly and have the secondary benefit of expanding the market for related CPE. By also including enhanced Internet access and voice messaging services in the package, carriers can provide a further incentive for additional customers to subscribe to ISDN and will help promote development and use of the Internet.

Similarly, digital subscriber line (xDSL) services require specialized modems at the customer's premises. Unlike modems used with ordinary telephone lines, these modems are not routinely provided with personal computers but must be obtained separately.⁹ Additionally, a principal use of xDSL services is to access the Internet. Those services provide Internet access at a far higher speed than is achievable over the public telephone network and have the added benefit of alleviating the local network congestion that increased Internet use of the public network has caused. By providing a discounted package that includes the xDSL service, a modem, and Internet access, a carrier can encourage customers to use the faster, more efficient telecommunications service, save them some of the up-front costs of the modem, promote increased use of the Internet, and provide one-stop shopping for a total high-speed Internet package.

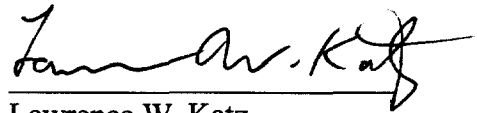
New advanced services and equipment can be expected to be introduced at increasingly frequent intervals, as telecommunications technology and competition accelerate innovation. If carriers can provide discounted packages of services and equipment, they can, if they choose, guarantee their customers that they will always have the most advanced available equipment and services. The offering could include the most current release of equipment and services (both telecommunications and enhanced) that the carrier offers. This type of packaged offering can promote rapid deployment of each generation of services and equipment, consistent with the requirements of the Act.

⁹ In addition, there is no industry-wide xDSL standard, so the modem on the customer's premises must match the particular xDSL technology used in the network. See John Stephens, *xDSL and the Interoperability Hurdle*, CTI at 96 (Apr. 1998).

IV. Conclusion

Accordingly, the Commission should eliminate the restriction on discounted packaging of telecommunications services, CPE, and enhanced services for all local and long distance carriers.

Respectfully Submitted,

A handwritten signature in black ink, appearing to read "Lawrence W. Katz", written over a horizontal line.

Lawrence W. Katz
1320 North Court House Road
8th Floor
Arlington, Virginia 22201
(703) 974-4862

Edward D. Young, III
Michael E. Glover
Of Counsel

Attorney for the Bell Atlantic
telephone companies

November 23, 1998

CERTIFICATE OF SERVICE

I hereby certify that on this 23rd day of November, 1998, a copy of the foregoing Comments of Bell Atlantic was sent by first class mail, postage prepaid, to the parties on the attached list.


Sally Anne Wolek

* Via hand delivery.

ITS, Inc.*
1919 M Street, NW
Room 246
Washington, DC 20554

(with disk copy)

Janice Myles
Common Carrier Bureau
Policy and program Planning Division
1919 M street, N.W.,
Room 544
Washington, DC 20554

(with disk copy)